

REMARKS

This is responsive to the Office Action dated 18 March 2005 for which an appropriate extension of time is hereby petitioned. In the Office Action, claims 1-12, 18-20, 25 and 26 are pending with claims 1-12, 18-20, 25 and 26 being rejected. Claims 26 and 26 have been canceled without prejudice or disclaimer, claims 1, 3, 5, 10, 12, and 18 have been amended, new claims 25 and 26 have been added. No new matter has been added. Reexamination and reconsideration of the claims as requested is respectfully requested.

The undersigned wishes to thank the Examiner for the time spend in an interview on 20 July 05 wherein the examiner indicated that claim 1 with amendment appeared to overcome the cited Pralus reference. Claim 1 has actually been further enhanced for clarity over what was presented to the examiner in the above mentioned interview by adding that the headset is wearable on and supported by a user's ear. This has been done only for clarification. It does however make clear that the Pralus reference is not of the same category of headset as, ear supported headsets are entirely different concepts, with different mechanical objectives and constraints as opposed to over the head headsets. Claim 12 is similar and should likewise be allowable.

Claims 1 and 12 are therefore presented with the expectation that the examiner will continue to agree that it is allowable.

The remaining claims, similar to claim 1 but not so restricted, are presented in the hope that they will likewise be found allowable in view of these arguments, but in any case, in preparation for appeal and to avoid any risk of a new issues rejection.

In the rejection the Mertturk reference is used in combination with Pralus. Mertturk is a very bare disclosure of a headset with a double-jointed parallel pivot system. It never closes into a fully compact unit by the mere folding on the pivots. It requires a further sliding element (i.e. three step movement). Frankly, its structure is extremely flimsy, and is only a paper patent, not a practical device which could survive normal usage. The single hinge points are too weak and modification (as suggested by

the sec 103 rejection) would require a major redesign of the product, which, of course, is not taught, disclosed or suggested.

Thus Mertturk is a very limited disclosure.

The Examiner proposes to combine an (elusively described - see below) element of Pralus into Mertturk.

We strongly submit that this is an unreasonable extension of sec 103 of the patent law as Pralus in 1) non analogous art (being an over-the-head headset), 2) that nothing in Mertturk would suggest a teaching of combination and indeed its elemental design teaches away from added complexity of such a combination, and 3) most importantly, Pralus simply does not teach the missing element claimed by the examiner.

In paragraph 2 on page 2 of the Office Action, claims 1-2, 4, 7, 12, 18-20, and 25-26 are rejected under 35 U.S.C. §102(b) as being anticipated by Mertturk (DE 29808425 U1) in view of Pralus, et al. (US 6,055,321). The Applicants respectfully traverse this rejection, but have amended the application to overcome the objections.

In paragraph 4 on page 10 of the Office Action, claims 1-7, and 26 are rejected under 35 U.S.C. §102 (b) as being anticipated by Mertturk in view of Beutler, et al. (US 4,897,873). The Applicants respectfully traverse this rejection, but have amended the application to overcome the objections.

In paragraph 5 on page 13 of the Office Action, claims 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Mertturk and Beutler in view of Ito, et al. (US 6,052,567). The Applicants respectfully traverse this rejection, but have amended the application to overcome the objections.

In paragraph 6 on page 14 of the Office Action, claims 10 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Mertturk and Beutler in view of Burris, et al. (US 5,708,724). The Applicants respectfully traverse this rejection, but have amended the application to overcome the objections.

Claim 1, amended, is the claim as discussed in the above-mentioned interview. It calls for a headset with a housing and a first surface thereon; a microphone arm with a longitudinal dimension pivotally connected to the housing by a *single* pivoting axis which is generally orthogonal to the longitudinal dimension and generally parallel to the first surface (see claim for exact wording). Claims 27-30 are similar to claim 1 without the recitation with respect to a single pivoting axis and are submitted to be patentable. The arguments set forth below are therefore applicable to such claims.

Clearly the Mertturk reference cannot support a rejection on this claimed structure, so the combination rejection with Pralus has been asserted. First and foremost, as mentioned above Pralus is non-analogous art. It is an over-the-head unit with a pivoting microphone arm which constitutes a minor portion of the entire structure. The problem/solution of Pralus is entirely different to that of the present invention and indeed Mertturk. Why would Mertturk borrow from an over the head system? Pure conjecture. The patent law requires more. A suggestion or teaching in either reference. The Examiner has not pointed out such and it is the Patent Office's burden to do so to sustain such a rejection.

But that is not all.

Pralus simply does not contain the disclosure asserted by the examiner. It may elude to the possibility of someone redesigning Pralus into a new device, but the *disclosure is simply not there.*

Pralus, as disclosed is substantially different. As recognized by the examiner, Pralus does not pivot on a single axis orthogonally of the longitudinal dimension and parallel to the first surface. Agreed.

But there is more. Actually, the disclosure of Pralus shows and describes only *rotational* pivoting which is parallel to its "first surface". The Mertturk reference fails to aid in making the claimed invention. It pivots in parallel but not orthogonally of the longitudinal dimension.

The Pralus reference is limited to what it shows and discloses. It cannot be extended beyond what it contains. First, Pralus is not worn on and supported by a user's ear. It is an over-the-head system which has fundamentally different objectives and constraints for compactness and wearability,

The Examiner has, in the interview, acknowledged that the pivoting action of microphone arm 18 as shown and described is *circular* and not orthogonal. This is *conclusively* proven by the drawing which shows the *microphone slots always facing inwardly* when the arm is pivoted. Simple geometric analysis shows that the *disclosed* movement is a rotational pivoting movement. Nothing more.

The specification, in column 6, line 16 et seq. states:

It is possible to provide integration of the stem 70 of the microphone with the handset via a ball joint 38, or a flexible stem, that allows articulation of the microphone from one side or the other of the main unit according to where the mouth is

The Examiner takes the position that the word "ball joint 38" provides a disclosure for an omnidirectional joint. It does not.

Element 38 is stated "allows articulation of the microphone from one side or the other of the main unit according to where the mouth is". This articulation is shown in Figure 1a, 1b and 2.

Figure 2 is a misleading figure because the arrows float in space and it is impossible to know their rotational axis, but there are clues elsewhere which make this clear.

Look closely at the slots on microphone 18. As mentioned, the slots are always facing toward the axis of rotation in the three positions shown in the figure. This is possible **ONLY** if the rotation is around the axis consistent with the figures 1a and 1b which do **NOT** show omnidirectional capability.

So why are the arrows in Fig. 2 seemingly suggesting that? Because this is a two dimensional figure and the axis shown in the dotted line is coming out of the paper, in which case, the circular arrows are totally consistent with Figures 1a and 1b.

The only available interpretation of Figure 2 and the supporting text is that the word "ball joint" means that the joint looks like a ball, but functions as a swivel exactly like the joints in Figures 3a, 3b and 3c.

If the inventor had wanted to show a ball joint with omni directional rotation, he would have shown the slits on the microphone arm 18 to be capable for facing away from the axis of rotation.

The Examiner has then argued that column 5 line 65-67 discloses a ball joint presumably capable of orthogonal movement. However, the element referred to in column 5 is *not* the microphone arm, but swivel joint 30 at the top of the headband (which, by the way is also shown as a swivel joint...no where in the entire specification is any ball joint shown or described).

The Examiner appears to be arguing that the mere statement in column 6, lines 16-20 that "...it is *possible* to provide integration of the stem 70 of the microphone with the handset via a ball joint 38 or flexible stem, *that allows articulation of the microphone from one side or the other of the main unit according to where the mouth is.*" (*emphasis added*).

Thus, the only disclosure of a ball joint, is that one *could* be used, but when read with the reason for adding such an element, it is clear that the *purpose* of adding such a joint, in the eyes of this inventor, is to allow the microphone to be used on when the headset is worn on the left or right.

That's it.

The teaching of a ball joint in Pralus is

- 1) **Incomplete** and left up to a third party to figure out how it would be implemented. How would Mertturk be modified from a simple pin pivot to a

complex ball joint and then be made to fold and slide into a compact device? It would be an effort of substantial re-engineering. Hardly the basis for a sec 103 rejection and,

- 2) If there is a **teaching** of using a ball joint in Pralus. it is for a purpose entirely *unrelated* to the claimed invention which calls for a microphone joint to create a compact unit when folded. The Pralus reference actually teaches away from making a compact unit as its teaching keeps the microphone arm distant from its first surface and never compact. Obviously since Pralus is not a headset supported by the ear, but is a large over the head time, has no purpose in teaching "compactness". For the examiner to take this bare disclosure of somehow inserting a ball joint into Pralus and then making a compact unit, goes entirely against the thrust of the Pralus disclosure.

Pralus and Mertturk and **incompatible arts**. The Mertturk reference is worn on and supported by the user's ear but its concept is not in agreement with the claimed invention of a pivot which is orthogonal to the longitudinal dimension and parallel to the first surface. Converting Mertturk to agree with the claimed invention would require a massive deviation from the disclosure. Mertturk relies on its double jointed swivel pins to make a partially compact system, and putting in joints according to the claimed invention would make the double joint bulky and incapable of sliding one over the other as in figure 1. Frankly, the disclosure for converting its structure to even combine with Pralus is not there, never mind the critical fact dismissed by the examiner, *that Pralus is clearly non-analogous art*, being an over-the-head system and not an on-the-ear system of the present invention and Mertturk.

Claim 27 which calls for the pivoting of the microphone arm to achieve the compact structure is not achievable with the prior art for the reasons set forth above and because Mertturk requires a second sliding motion to achieve some level of compactness, but it cannot, as disclosed, maintain the arm within the peripheral boundary.

Claim 28 calls for the arm to unfold by the recited pivoting action. Mertturk requires further pivoting actions.

Claim 29 calls for the earhook to be in pivotable contact with the first surface. Pralus is irrelevant to this combination and Mertturk does not have a pivoting ear hook.

Claim 30 is similar to claim 1 except that it does not call for a single pivot axis. The entire above argumentation is directed to this claims allowance.

Claim 18 recites a combination of the above features with a biasing element capable to detecting the on off state of the headset. Pralus has again been asserted (col. 6 line 12) but that again is a bald statement that rotation of the microphone could be used to detect its state. It does not disclose how that would be done. It is not a mere design choice. Besides, claim 18 recites structures (slidable elements, recesses, bias force, etc.) which are real defined structures. To apply Pralus without more, requirement manufacturing of disclosure which is simply not present in Pralus.

Claim 3 has been amended to explicitly recite the structure which uniquely allows the arm to be urged toward open or closed positions. This structure is nowhere to be found in the cited art.

The remaining dependent claims recite further specific structures, which are not mere design choice, but represent significant improvements. They should likewise be found allowable, but if rejected, it is respectfully requested that explicit reference to like disclosure in the prior art be pointed at, because, it is not apparent that the present art of record could support such rejections.

CONCLUSION

In view of the amendments and reasons provided above, it is believed that all pending claims are in condition for allowance. The amendments clarify the patentable invention without adding new subject matter. Applicants respectfully request favorable reconsideration and early allowance of all pending claims.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicants' attorney of record, Michael B. Lasky at (952) 253-4106.

Respectfully submitted,

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Date: August 18, 2005

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